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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 8th Oecember, 1970:—

BILL NO. XL OF 1970

A Bill further to amend the Advocates Act, 1961

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Advocates (Amendment) Act, 1970.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 1.

25 of 1961. **2.** In section 1 of the Advocates Act, 1961 (hereinafter referred to as the principal Act),—

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) It extends to the whole of India.";

(*b*) in sub-section (*3*), for the words "shall come into force", the words, brackets and figure "shall, in relation to the territories other than those referred to in sub-section (*4*), come into force" shall be substituted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) This Act shall, in relation to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.".

Amendment of section 2.

3. Section 2 of the principal Act shall be re-numbered as sub-section (1) of that section, and

(1) in sub-section (1) as so re-numbered,—

(a) for clause (a), the following clause shall be substituted, namely:—

'(a) "advocate" means an advocate entered in any roll under the provisions of this Act and includes a person who has been a vakil or a pleader or an attorney and is entered in any such roll;';

(b) clause (f) shall be omitted;

(c) in clause (g),—

(i) after the words, brackets and figure "except in sub-section (1)", the words, brackets, figure and letter "and sub-section (1A)" shall be inserted;

(ii) in sub-clause (ii), for the words "the High Court of Punjab", the words "the High Court of Delhi" shall be substituted;

(2) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir or in the Union territory of Goa, Daman and Diu, shall, in relation to that State or that territory, be construed as a reference to the corresponding law, if any, in force in that State or that territory, as the case may be.".

Amendment of section 3.

4. In section 3 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a), after the word "Gujarat,", the words "Jammu and Kashmir," shall be inserted;

(ii) in clause (ccc), for the words "the Union territory of Dadra and Nagar Haveli,", the words "the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu," shall be substituted;

(b) in sub-section (2),—

(i) in clause (a), for the words "in the case of the State Bar Council of Delhi, the Additional Solicitor-General of India, *ex-officio*;", the following shall be substituted, namely:—

"in the case of the State Bar Council of Assam and Nagaland, the Advocate-General of each of the States of Assam

and Nagaland, *ex-officio;* in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the States of Punjab and Haryana, *ex-officio;* in the case of the State Bar Council of Delhi, an advocate nominated by the Attorney-General of India;";

(*ii*) for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of a State Bar Council with an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council:";

(*iii*) for the existing proviso, the following proviso shall be substituted, namely:—

"Provided that as nearly as possible one-half of such elected members shall, subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least fifteen years been advocates on a State roll, and in computing the said period of fifteen years in relation to any such person, there shall be included any period during which that person has been an advocate enrolled under the Indian Bar Councils Act, 1926.";

38 of 1926.

(*c*) after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*6*) Nothing in clause (*b*) of sub-section (*2*) shall affect the representation of elected members in any State Bar Council as constituted immediately before the commencement of the Advocates (Amendment) Act, 1970, until that State Bar Council is reconstituted in accordance with the provisions of this Act.".

5. In section 4 of the principal Act,— Amendment of section 4.

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualifications specified in the proviso to sub-section (*2*) of section 3;";

(*b*) in clause (*i*) of sub-section (*3*), after the words "his election", the words "or till he ceases to be a member of the State Bar Council, whichever is earlier" shall be inserted.

6. In section 6 of the principal Act,— Amendment of section 6.

(*a*) in sub-section (*1*), after clause (*e*), the following clauses shall be inserted, namely:—

"(*ee*) to conduct seminars and organise talks on legal topics by eminent jurists;

(*eee*) to organise legal aid to the poor in the manner specified in the scheme framed under section 14A;";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) A State Bar Council shall constitute a fund to be called the Legal Aid Fund to which shall be credited—

(*a*) in each financial year a sum of not less than rupees one hundred out of the enrolment fee realised from every person enrolled as an advocate after the commencement of the Advocates (Amendment) Act, 1970, during the financial year immediately preceding that year;

(*b*) gifts, grants, donations or benefactions received for the purpose of legal aid.".

Amendment of section 7.

7. Section 7 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and

(*a*) in sub-section (*1*) as so re-numbered,—

(*i*) clause (*a*) shall be omitted;

(*ii*) after clause (*i*), the following clauses shall be inserted, namely:—

"(*ia*) to conduct seminars and organise talks on legal topics by eminent jurists;

(*ib*) to organise legal aid to the poor in the manner specified in the scheme framed under section 14A;

(*ic*) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;";

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) The Bar Council of India shall constitute a fund to be called the Central Legal Aid Fund to which shall be credited—

(*a*) in each financial year a sum equivalent to not less than ten per cent. of the total of the enrolment fees received by it under section 46 during the financial year immediately preceding that year;

(*b*) gifts, grants, donations or benefactions received for the purpose of legal aid.".

Insertion of new section 7A.

8. After section 7 of the principal Act, the following section shall be inserted, namely:—

Membership in international bodies.

"7A. The Bar Council of India may become a member of international legal bodies such as the International Bar Association or the International Legal Aid Association, contribute such sums as it thinks fit to such bodies by way of subscription or otherwise and authorise expenditure on the participation of its representatives in any international legal conference or seminar.".

Amendment of section 8.

9. In section 8 of the principal Act,—

(*a*) in sub-section (*1*), the following proviso shall be inserted at the end, namely:—

"Provided that the term of office of a member elected to a State Bar Council after the commencement of the Advocates (Amendment) Act, 1966, shall be five years from the date of publication of the result of his election.";

23 of 1966.

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) In the case of the State Bar Council of Delhi, the term of office of the advocate nominated by the Attorney-General of India under clause (*a*) of sub-section (*2*) of section 3, shall be five years from the date of his nomination:

Provided that such advocate may, by writing under his hand, addressed to the Attorney-General of India, resign his office.".

Amendment of section 9.

10. In section 9 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) the words, brackets and figures "who possess the qualifications specified in the proviso to sub-section (*2*) of section 3 and" shall be omitted;

(*ii*) the following proviso shall be inserted at the end, namely:—

"Provided that no person who does not possess the qualifications specified in the proviso to sub-section (*2*) of section 3 shall be eligible for being elected or co-opted, as the case may be, as a member of any disciplinary committee.";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Notwithstanding anything contained in sub-section (*1*), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1970, may dispose of the proceedings pending before it as if this section had not been amended by the said Act.".

Insertion of new section 9A.

11. After section 9 of the principal Act, the following section shall be inserted, namely:—

Constitution of legal aid committees.

"9A. (*1*) A State Bar Council shall constitute a legal aid committee which shall consist of five members of whom three shall be persons elected by the Council from amongst its members and two shall be co-opted by the Council from amongst persons having special knowledge or practical experience in respect of legal aid programmes.

(*2*) The Bar Council of India shall constitute a Central legal aid committee consisting of nine members of whom five shall be persons elected by the Council from amongst its members and four shall

be co-opted by the Council from amongst persons having special knowledge or practical experience in respect of legal aid programmes.

(3) No person shall be eligible for being elected as a member of the legal aid committee or the Central legal aid committee under sub-section (1) or sub-section (2), as the case may be, unless he possesses the qualifications specified in the proviso to sub-section (2) of section 3.".

Insertion of new section 10A.

12. Section 10A of the principal Act shall be re-numbered as section 10B and before section 10B as so re-numbered, the following section shall be inserted, namely:—

Transaction of business by Bar Councils and committees thereof.

"10A. (1) The Bar Council of India shall meet at New Delhi.

(2) A State Bar Council shall meet at its headquarters.

(3) The committees other than disciplinary committees constituted by the Bar Councils shall meet at the headquarters of the respective Bar Councils.

(4) Every Bar Council and every committee thereof except the disciplinary committees shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.

(5) The disciplinary committees constituted under section 9 shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.".

Amendment of section 12.

13. In section 12 of the principal Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) As soon as may be practicable at the end of each financial year, but not later than the 31st day of December of the year next following, a State Bar Council shall send a copy of its accounts together with a copy of the report of the auditors thereon to the Bar Council of India and shall cause the same to be published in the Official Gazette.

(4) As soon as may be practicable at the end of each financial year, but not later than the 31st day of December of the year next following, the Bar Council of India shall send a copy of its accounts together with a copy of the report of the auditors thereon to the Central Government and shall cause the same to be published in the Gazette of India.".

Insertion of new section 14A.

14. After section 14 of the principal Act, the following section shall be inserted, namely :—

Scheme for legal aid to the poor.

"14A. (1) A Bar Council shall, as soon as may be, after the commencement of the Advocates (Amendment) Act, 1970, make a scheme for the purpose of organising legal aid to the poor.

(2) In particular, and without prejudice to the generality of the foregoing power, the scheme may provide for—

(a) the description of proceedings, civil, criminal or revenue, except proceedings before any court or tribunal before which

persons have no right and are not normally allowed to be heard by a counsel, in connection with which legal aid may be given;

(*b*) the maximum income or the maximum value of the movable and immovable property of a person who shall be entitled to legal aid or advice;

(*c*) the contribution to the Legal Aid Fund in respect of any proceeding payable by the party receiving legal aid;

(*d*) the constitution of legal aid sub-committees at the district level for the purpose of making legal aid and advice more readily available;

(*e*) the panel of advocates or solicitors willing to act for persons receiving legal aid for different courts and for different districts and the fees payable to them for the services rendered;

(*f*) the circumstances in which a person may be refused legal aid or advice by reason of his conduct or otherwise when seeking or receiving legal aid or advice (whether in the same or in a different matter); and

(*g*) the authority to which an appeal may be preferred against the decision of the legal aid committee or sub-committee refusing legal aid to a person.

(*3*) The Bar Council may make a scheme to amend or vary any scheme made under sub-section (*1*).".

Amendment of section 15

15. In section 15 of the principal Act, in sub-section (*2*),—

(*a*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) the election of members of the Bar Council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot, the preparation and revision of electoral rolls and the manner in which the results of election shall be published;";

(*b*) in clause (*h*), the words "the times and places where such meetings are to be held," shall be omitted.

Amendment of section 16

16. In section 16 of the principal Act, in sub-section (*2*), for the words "experience and standing at the Bar", the words "standing at the Bar or special knowledge or experience in law" shall be substituted

Amendment of section 17

17. In section 17 of the principal Act,—

(*a*) in clause (*a*) of sub-section (*1*), for the words "and who, within the prescribed time", the words, figures and letters "including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time" shall be substituted;

(*b*) in sub-section (*3*), clause (*c*) shall be omitted.

Substitution of new section for section 20.

18. For section 20 of the principal Act, the following section shall be substituted, namely:—

Special provision for enrolment of certain Supreme Court advocates.

"20. (*1*) Notwithstanding anything contained in this Chapter, every advocate who was entitled as of right to practise in the Supreme Court immediately before the appointed day and whose name is not entered in any State roll may, within the prescribed time, express his intention in the prescribed form to the Bar Council of India for the entry of his name in the roll of a State Bar Council and on receipt thereof the Bar Council of India shall direct that the name of such advocate shall, without payment of any fee, be entered in the roll of that State Bar Council, and the State Bar Council concerned shall comply with such direction.

(*2*) Any entry in the State roll made in compliance with the direction of the Bar Council of India under sub-section (*1*) shall be made in the order of seniority determined in accordance with the provisions of sub-section (*3*) of section 17.

(*3*) Where an advocate referred to in sub-section (*1*) omits or fails to express his intention within the prescribed time, his name shall be entered in the roll of the State Bar Council of Delhi.".

Amendment of section 21.

19. In section 21 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision.".

Substitution of new section for section 22.

20. For section 22 of the principal Act, the following section shall be substituted, namely:—

Certificate of enrolment.

"22. (*1*) There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act.

(*2*) Every person whose name is so entered in the State roll shall be presented by the Chairman of the State Bar Council concerned before the Chief Justice of the High Court.".

Amendment of section 23.

21. In section 23 of the principal Act,—

(*a*) sub-section (*3*) shall be omitted;

(*b*) in sub-section (*4*), for the words, brackets and figures "sub-sections (*1*), (*2*) and (*3*)", the words, brackets and figures "sub-sections (*1*) and (*2*)" shall be substituted.

Amendment of section 24.

22. In section 24 of the principal Act,—

(*a*) in sub-section (*1*)—

(*i*) in clause (*c*),—

(*I*) in sub-clause (*i*), for the figures, letters and words "28th day of February, 1963", the figures, letters and words "12th day of March, 1967" shall be substituted;

(*II*) for sub-clause (*iii*), the following sub-clause shall be substituted, namely:—

"(*iii*) after the 12th day of March, 1967, after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or";

(*III*) for the words "he is a barrister", the following shall be substituted, namely:—

"he is a barrister and is called to the Bar on or before the 31st day of December, 1973; or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act";

(*ii*) clause (*d*) shall be omitted;

(*iii*) for clause (*f*), the following clause shall be substituted, namely:—

"(*f*) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899, and an enrolment fee payable to the State Bar Council of three hundred and fifty rupees.";

2 of 1899.

(*b*) in sub-section (*3*), clause (*b*) shall be omitted.

Substitution of new section for section 26A.

23. For section 26A of the principal Act, the following section shall be substituted, namely:—

Power to remove names from roll.

"26A. A State Bar Council may remove from the State roll the name of any advocate who is dead or from whom a request has been received to that effect.".

Amendment of section 28.

24. In section 28 of the principal Act, in sub-section (*2*),—

(*a*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under section 20;";

(*b*) clause (*b*) shall be omitted.

Amendment of section 30.

25. In section 30 of the principal Act, for the words "common roll", the words "State roll" shall be substituted.

Amendment of section 34.

26. In section 34 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.".

Amendment of section 35.

27. In section 35 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw

a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.";

(*b*) in sub-section (*2*), the words ", if it does not summarily reject the complaint," shall be omitted;

(*c*) in the *Explanation,* for the words "the Additional Solicitor General of India", the words "the advocate nominated by the Attorney-General of India in this behalf" shall be substituted.

Amendment of section 36.

28. In section 36 of the principal Act,—

(*a*) in sub-section (*1*), the words "on the common roll" shall be omitted;

(*b*) sub-section (*2*) shall be omitted;

(*c*) in sub-section (*4*), the words ", and where any proceedings have been withdrawn for inquiry before the Bar Council of India, the State Bar Council concerned shall give effect to any such order" shall be omitted.

Insertion of new section 36A.

29. After section 36 of the principal Act, the following section shall be inserted, namely:—

Changes in constitution of disciplinary committees.

"36A. Whenever in respect of any proceeding under section 35 or section 36, a disciplinary committee of the State Bar Council or a disciplinary committee of the Bar Council of India ceases to exercise jurisdiction and is succeeded by another committee which has and exercises jurisdiction, the disciplinary committee of the State Bar Council or the disciplinary committee of the Bar Council of India, as the case may be, so succeeding may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee:

Provided that the advocate concerned may demand that before the proceedings are so continued, the previous proceedings or any part thereof be re-opened or that before any order is passed against him, he be re-heard.".

Substitution of new sections for section 37.

30. For section 37 of the principal Act, the following sections shall be substituted, namely:—

Appeal to the High Court.

"37. Any person aggrieved by an order made by the disciplinary committee of a State Bar Council under section 35 may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the High Court for the State concerned which may pass such orders (including an order varying the punishment awarded by the disciplinary committee of the State Bar Council) thereon as it deems fit:

Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the High Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

Continuance of certain proceedings.

37A. Nothing in section 36 or section 37 shall affect any proceeding for disciplinary action or any appeal which, on the commencement of the Advocates (Amendment) Act, 1970, is pending before the disciplinary committee of the Bar Council of India, and every such proceeding or appeal may be heard and disposed of by the disciplinary committee of the Bar Council of India as if section 36 or section 37 had not been amended or substituted, as the case may be, by the said Act.".

Amendment of section 38.

31. In section 38 of the principal Act,—

(*a*) the words and figures "or section 37" shall be omitted;

(*b*) after the words "such order", the brackets and words "(including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India)" shall be inserted;

(*c*) the following proviso shall be inserted at the end, namely:—

"Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.".

Substitution of new section for section 39.

32. For section 39 of the principal Act, the following section shall be substituted, namely:—

Application of sections 5 and 12 of Limitation Act, 1963.

"39. The provisions of sections 5 and 12 of the Limitation Act, 1963, shall, so far as may be, apply to appeals under section 37 and section 38.". 36 of 1963.

Amendment of section 40.

33. Section 40 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and

(*a*) in sub-section (*1*) as so re-numbered, for the words "the disciplinary committee of the Bar Council of India", the words "the High Court concerned" shall be substituted;

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Where an application is made for stay of the order before the expiration of the time allowed for appealing therefrom under section 37 or section 38, the disciplinary committee of the State Bar Council, or the disciplinary committee of the Bar Council of India, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.".

Amendment of section 41.

34. In section 41 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) clause (*b*) shall be omitted; and

(*ii*) the words "or the common roll, as the case may be" shall be omitted;

(*b*) sub-section (*2*) shall be omitted.

Amendment of section 42.

35. In section 42 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date:

Provided that no final orders of the nature referred to in sub-section (3) of section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present.".

Insertion of new section 42A.

36. After section 42 of the principal Act, the following section shall be inserted, namely:—

Powers of Bar Council of India and other committees.

"42A. The provisions of section 42 shall, so far as may be, apply in relation to the Bar Council of India, the enrolment committee, the election committee, the legal aid committee, or any other committee of a Bar Council as they apply in relation to the disciplinary committee of a Bar Council.".

Amendment of section 44.

37. In section 44 of the principal Act, the proviso shall be omitted.

Amendment of section 46.

38. In section 46 of the principal Act, after the words "realised by it", the words ", reduced by such sum as is credited by that State Bar Council to its Legal Aid Fund," shall be inserted.

Insertion of new section 46A.

39. After section 46 of the principal Act, the following section shall be inserted, namely:—

Financial assistance to State Bar Council.

"46A. The Bar Council of India may, if it is satisfied that any State Bar Council is in need of funds for the purpose of performing its functions under this Act, give such financial assistance as it deems fit to that Bar Council by way of grant or otherwise.".

Amendment of section 48.

40. In section 48 of the principal Act, after the words "a member of a Bar Council", the words "or any committee thereof" shall be inserted.

Amendment of section 48A.

41. In sub-section (1) of section 48A of the principal Act, for the words "The Bar Council of India", the words "The High Court concerned" shall be substituted.

Insertion of new section 48AA.

42. After section 48A of the principal Act, the following section shall be inserted, namely:—

Review.

"48AA. The Bar Council of India or any of its committees other than its disciplinary committee, may of its own motion or otherwise review any order passed by it under this Act.".

Amendment of section 49.

43. Section 49 of the principal Act shall be re-numbered as sub-section (1) of that section, and

(*a*) in sub-section (*1*) as so re-numbered,—

(*1*) for clause (*af*), the following clause shall be substituted, namely:—

"(*af*) the minimum qualifications required for admission to a course of degree in law in any recognised University;";

(*2*) after clause (*g*), the following clause shall be inserted, namely:—

"(*gg*) the form of dress or dresses which a State Bar Council may, having regard to the climatic conditions, adapt for use of the advocates practising within that State;";

(*3*) in the existing proviso,—

(*i*) for the words "Provided that", the words "Provided further that" shall be substituted,

(*ii*) before the proviso as so amended, the following proviso shall be inserted, namely:—

"Provided that no rules made with reference to clause (*c*) shall have effect unless they have been approved by the Chief Justice of India:";

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in the first proviso to sub-section (*1*), any rules made with reference to clause (*c*) of the said sub-section by the Bar Council of India and in force immediately before the commencement of the Advocate (Amendment) Act 1970, shall continue in force until altered or repealed or amended in accordance with the provisions of this Act.".

Substitution of new section for section 49A.

44. For section 49A of the principal Act, the following section shall be substituted, namely:—

Power of Central Government to direct rules to be made or to make or amend rules.

"49A. (*1*) Where the Central Government considers it expedient so to do, it may, by order in writing, direct a Bar Council to make any rules or to amend or revoke any rules already made within such period as it may specify in this behalf.

(*2*) If such Bar Council fails or neglects to comply with such order within the specified period, the Central Government may make the rules or amend or revoke the rules made by that Bar Council, as the case may be, either in the form specified in the order or with such modifications thereof as the Central Government thinks fit.

(*3*) Every rule made under sub-section (*2*) shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect,

as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

Insertion of new sections 58AC, 58AD and 58AE.

45. After section 58AB of the principal Act, the following sections shall be inserted, namely:—

Special provisions with respect to certain persons migrating to India.

"58AC. Notwithstanding the repeal by this Act of the provisions of the Legal Practitioners Act, 1879, or of any other law relating to the admission and enrolment of legal practitioners (hereafter in this section referred to as such Act or law), every person who migrates to the territory of India from any area which, before the 15th day of August, 1947, was comprised within India as defined in the Government of India Act, 1935, and who has, before such migration, been a pleader, mukhtar or revenue agent in any such area under any law in force therein, may be admitted and enrolled under the relevant provisions of such Act or law as a pleader, mukhtar or, as the case may be, revenue agent, if he— 18 of 1879.

(*a*) makes an application for the purpose to the appropriate authority under such Act or law; and

(*b*) is a citizen of India and fulfils other conditions, if any, specified in this behalf by the appropriate authority aforesaid,

and not withstanding the repeal by this Act of the relevant provisions of such Act or law, every pleader, mukhtar or revenue agent so enrolled shall have the same rights as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority to which he would be subject under the relevant provisions of such Act or law as if they had not been repealed and accordingly, those provisions shall have effect in relation to such persons.

Special provisions in relation to the Union Territory of Goa, Daman and Diu.

58AD. (*1*) Notwithstanding anything contained in this Act, all persons who, immediately before the date on which the provisions of Chapter III are brought into force in the Union territory of Goa, Daman and Diu, were entitled to practise the profession of law (whether by way of pleading or acting or both) under any law in force in the said Union territory or who would have been so entitled had they not been in public service on the said date, shall, for the purpose of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of Maharashtra, be admitted as an advocate on the State roll maintained in respect of the said Union territory: 38 of 1926.

Provided that the provisions of this sub-section shall not apply to any person who, on the date of the application aforesaid, was not a citizen of India.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the Union territory of Goa, Daman and Diu, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force in the said Union territory, or who does not elect to be or is not qualified to be enrolled as an advocate under sub-section (1), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(3) On the date on which this Act or any part thereof comes into force in the Union territory of Goa, Daman and Diu, the law in force in that Union territory which corresponds to this Act or such part and which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.

Special provisions in relation to Jammu and Kashmir.

58AE. (1) Notwithstanding anything contained in this Act, all advocates who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, were entitled to practise in the High Court of that State, or who would have been so entitled had they not been in public service on the said date, shall, for the purpose of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of India, be admitted as an advocate on the State roll maintained in respect of the said State.

38 of 1926.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law in force in the said State, or who would have been so entitled had he not been in public service on the said date, may be admitted as an advocate on the State roll maintained in respect of the said State, if he—

(i) makes an application for such amendment in accordance with the provisions of this Act; and

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1) of section 24.

(3) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the State of Jammu and Kashmir, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force therein, or who does not elect to be or is not quali-

fied to be enrolled as an advocate under sub-section (*1*) or sub-section (*2*), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(*4*) On the date on which this Act or any part thereof comes into force in the State of Jammu and Kashmir, the law in force in that State which corresponds to this Act or such part thereof which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.".

STATEMENT OF OBJECTS AND REASONS

On the basis of the recommendations of the Advocates Act Review Committee and the experience gained in the practical working of the Advocates Act, 1961, the Advocates (Second Amendment) Bill, 1968, was brought before Parliament. While the Bill was before the Select Committee of the Lok Sabha, persistent demands for further extensive amendments in the Act were voiced by the Bar Councils, Bar Associations and other individuals. The National Conference on Legal Aid held on March 28-29, 1970, in New Delhi suggested that to begin with an amendment of the Act should be undertaken at the earliest to provide for the constitution of a compulsory fund for legal aid. In view thereof, it has been considered desirable to replace the Advocates (Second Amendment) Bill, 1968 by a comprehensive amending Bill, which takes into account these and other suggestions. The Bill seeks to make the following, among other amendments:—

(*i*) *Extension of the Act to Jammu and Kashmir and Goa, Daman and Diu.*—The Advocates Act, 1961, provides for a unified all-India Bar with one class of legal practitioners, namely, advocates who would be entitled to practise in all the courts in India including the Supreme Court. At present the Act extends to the whole of India except the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu. The object underlying the Act cannot be fully achieved unless it extends to these areas too. It is, therefore, proposed to extend the Act to the aforesaid areas as well.

(*ii*) *Legal aid to the poor.*—It is proposed to make it obligatory on each Bar Council to constitute a Legal Aid Fund and to formulate a legal aid scheme for this purpose. Every State Bar Council will credit to its Legal Aid Fund at least Rs. 100 out of the enrolment fee (which is being raised from Rs. 250 to Rs. 350), charged by the Council for admission as advocates. Similarly, 10 per cent. of the income of the Bar Council of India from enrolment fees is to be credited to its Legal Aid Fund. These Funds can be augmented by donations and grants. Bar Councils will constitute Legal Aid Committees to organise legal aid to the poor in accordance with the provisions of the scheme.

(*iii*) *Pre-enrolment training.*—The Bar Council of India has decided that in future a degree in law can be obtained only after undergoing a three-year course of study in law after graduation as a result of which the age of entry into the legal profession becomes much higher than the age of entry in other professions. It is, therefore, felt that after a three-year course in law in a University it is not necessary to retain the statutory provision in the Act requiring a further examination or practical training.

(*iv*) *Recognition of foreign qualifications on reciprocal basis.*—At present, for the purposes of enrolment as advocates, barristers are treated on the same footing as holders of Indian law degrees. It is proposed that for the future a call to the Bar would be treated on the same footing as any other foreign qualification in law and would be recognised only on a reciprocal basis. To avoid hardship to Indian students who are now studying for the Bar on the basis of the existing legal provisions, the existing concession would continue to be admissible to those who are called to the Bar till December 31, 1973.

(*v*) *Dresses for advocates.*—At present there is no provision in the Act to enable the Bar Council of India or any State Bar Council to prescribe a uniform dress for practising advocates. The Bar Council of India is being empowered to prescribe certain forms of dresses from which a State Bar Council may adapt any one or more dress or dresses having regard to the climatic conditions prevailing in that State.

(*vi*) *Right to practise for legal practitioners migrating from Pakistan.*—Legal practitioners have been migrating from Pakistan to India and in order to cover their cases it is proposed to provide that such legal practitioners shall be allowed to continue to practise as pleaders, revenue agents or mukhtars, even if they are not entitled to be enrolled as advocates under the Advocates Act, 1961.

2. The Bill seeks to achieve the above objects. Opportunity has been taken to make certain other amendments.

3. The notes on clauses appended to the Bill explain the provisions of the Bill.

NEW DELHI;
The 18th August, 1970.

JAGANATH RAO

Notes on Clauses

Clause 2.—This clause seeks to extend the Advocates Act, 1961 to the State of Jammu and Kashmir, and to the Union territory of Goa, Daman and Diu. The Central Government is empowered by notification to fix the date on which the Act will come into force in these areas and different dates may be chosen in respect of different provisions of this Act.

Clause 3.—

Sub-clause (1) (a).—It seeks to clarify that persons who were vakils or pleaders before the coming into force of the Advocates Act, 1961 and were thereafter enrolled as advocates are also entitled to be considered as having been advocates at all times and for all purposes. This is to remove doubts about their status in relation to other advocates.

Sub-clause (1) (b).—It is proposed to omit clause (*f*) of section 2 of the Act as it has been noticed that the preparation and maintenance of the common roll of advocates by the Bar Council of India, as contemplated by sub-section (1) of section 20 of the Act would be extremely expensive and cumbersome. The object would be equally served by providing for copies of the State roll being sent to the Bar Council of India.

Sub-clause (1) (c) (i).—Clause 26 proposes to empower the High Court to fix fee for the adversary's advocate, pleader, vakil, mukhtar or attorney in all proceedings before it and the courts subordinate to it. Judicial Commissioner's Courts are proposed to be treated as High Courts for this purpose.

Sub-clause (1) (c) (ii).—The Union territory of Delhi has a separate High Court and is no longer under the High Court of Punjab. Hence this amendment is proposed.

Sub-clause (2).—The Act is proposed to be extended to the State of Jammu and Kashmir. All the laws applicable in India are not in force in that State but the State has certain corresponding laws. This sub-clause seeks to provide a rule of construction for any reference in the Act to a law which is not in force in that State.

Clause 4.—Section 3 deals with the constitution of the State Bar Councils. It is proposed to have a separate Bar Council for the State of Jammu and Kashmir while the Union territories of Goa, Daman and Diu and Dadra and Nagar Haveli will have a common Bar Council with the State of Maharashtra.

The post of Additional Solicitor-General of India having been abolished, it is necessary to provide for the discharge of the functions performed by him under the Act. It is proposed that the place of the Additional Solicitor-General of India should be taken by an Advocate nominated by the Attorney-General of India.

The States of Assam and Nagaland and the States of Punjab and Haryana have common High Courts and common Bar Councils. It is proposed to make a specific provision that the Advocate-General of each of the States should be an *ex-officio* member of the concerned Bar Council.

At present all State Bar Councils consist of twenty members, except the State Bar Councils of Assam, Orissa and Delhi which consist of fifteen members. The Bar Councils whose member strength exceeds 10,000 have represented for greater representation. It is proposed that the strength of the State Bar Councils be regulated on the basis of their electorate.

Under the existing proviso to section 3(2) one-half of elected members of a State Bar Council are required to have at least ten years' practice as advocates. With a view to bring a more mature body of persons to the Councils, it is proposed to raise the standing at the Bar of such members to fifteen years.

Clause 5.—It is proposed that the membership of the Bar Council of India should be open only to advocates with fifteen years' standing.

It also provides that a member of the Bar Council of India shall cease to hold office as such if he ceases to be an *ex-officio* member of the State Bar Council which he represents.

Clause 6.—Section 6 deals with functions of the State Bar Councils. It is proposed to empower the State Bar Councils to conduct seminars, etc., on legal topics and to organise legal aid to the poor by constituting a Legal Aid Fund for this purpose.

Clause 7.—Section 7 of the Act deals with functions of the Bar Council of India. It is proposed to delete the provision regarding the preparation and maintenance of common roll of advocates. The Bar Council of India is being empowered to conduct seminars, etc., on legal topics and to organise legal aid to the poor by constituting a Central Legal Aid Fund. The Council is also being empowered to recognise foreign legal qualifications on a reciprocal basis for the purpose of admission as an advocate under the Act.

Clause 8.—It is necessary for the Bar Council of India to become a member of international legal bodies and to contribute funds to such bodies by way of subscription or otherwise. The clause confers the necessary authority.

Clause 9.—Elections to the Bar Councils involve considerable expenditure. In order to curtail the expenditure the term of office of members of State Bar Councils is proposed to be extended from the present four years to five years for members elected after the Advocates (Amendment) Act, 1966 came into force. The term of office of the member nominated by the Attorney-General of India to the Bar Council of Delhi is also fixed at five years.

Clause 10.—It is proposed to provide that all members of the disciplinary committee, which is invested with plenary powers including that of striking advocates off the rolls, shall be advocates of not less than fifteen years' standing. Consequential amendment has also been suggested to save pending proceedings.

Clause 11.—The new clause seeks to empower the Bar Council of India and the State Bar Councils to constitute Central legal aid committees and legal aid committees respectively. Their members are to be advocates of fifteen years' standing. The Bar Councils are also being empowered to co-opt members having special knowledge or practical experience in respect of legal aid programmes.

Clause 12.—In order to cut down avoidable expenditure on touring the new clause proposes that meetings of the Bar Council of India and its committees except the disciplinary committees should be held at New Delhi. Similarly the meetings of the State Bar Councils and their committees except disciplinary committee shall be held at their headquarters.

Clause 13.—To ensure the proper management of finances by State Bar Councils and the Bar Council of India, it is proposed to make a provision for sending of audited accounts to the Bar Council of India and the Central Government by the end of the financial year.

Clause 14.—The new clause requires the Bar Councils to formulate a scheme for legal aid to the poor.

Clause 15.—It provides that elections of the members of the Bar Councils shall be by secret ballot with a provision for postal ballot for electors who are out of station.

Clause 16.—This clause seeks to provide that special knowledge or experience in law may also be taken into account in designating an advocate as a senior advocate.

Clause 17.—In view of the provision contained in section 17(1) (a) of the Act any person, entered as an advocate on the roll of any High Court under the Bar Councils Act, 1926, who failed to express his intention to practise within the jurisdiction of a Bar Council in the prescribed manner and within the prescribed time, can be enrolled as an advocate only if he applies afresh for enrolment, pays the prescribed fee and satisfies the other necessary conditions. This is also applicable to advocates enrolled in Pakistan, and who migrated to India after the expiry of the prescribed time. To avoid this undue hardship, the proposed amendment would enable these persons to give requisite notice to practise and become advocates under the Act.

Section 17(3) provides that the seniority of vakils, pleaders and attorneys who were enrolled as advocates should be determined in accordance with the date of their entry in the register of vakils, pleaders or attorneys as the case may be. It is proposed that the seniority of vakils, pleaders and attorneys who were not entitled to practise in the High Courts under the Indian Bar Councils Act, 1926 and who were enrolled as advocates immediately before the appointed date, namely, the 1st December, 1961 or thereafter, shall be determined according to the date of enrolment as advocates, and for that purpose to delete clause (c) of sub-section (3) of section 17 of the Act.

Clause 18.—At present there are some advocates of the Supreme Court whose names do not appear in any State roll. Provision is proposed to be made that they should enrol themselves on any State roll of their choice within the prescribed period. In the event of their failure to do so, their names would be transferred to the rolls of the Bar Council of Delhi.

Clause 19.—In view of the proposed abolition of the common roll of advocates, consequential changes are sought to be effected by this clause.

Clause 20.—Sub-section (1) of the proposed new section is of consequential nature due to the abolition of the common roll of advocates. Sub-section (2) seeks to make the entry of a new advocate known and more dignified.

Clause 21.—It seeks to delete sub-section (3) of the Act consequent on the abolition of the office of the Additional Solicitor-General of India.

Clause 22.—Section 24 of the Act is about persons who may be admitted as advocates on a State roll. The undermentioned amendments are proposed in this section:—

1. To make a three-year law degree from any University in India the minimum essential qualification for eligibility for enrolment as an advocate.

2. At present a barrister is treated in the same way as the holder of an Indian law degree for his eligibility to practise in India. It is proposed that a call to the Bar should be treated like any other foreign legal qualification in future. Exemption is proposed to be granted till 31st December, 1973 in order to avoid hardship to the Indian students who have already started their studies at the Inns of court.

3. Provision regarding requirement of practical training and examination before enrolment as advocates is proposed to be abolished.

4. On the coming into force of the Advocates Act which provided for the preparation of a roll of Advocates by the Bar Council, Entry 30 of the Indian Stamp Act, 1899 which provided for the levy of stamp duty for entry as an advocate on the roll of any High Court, became inapplicable. Recently certain State legislations like that of U.P. have amended the Stamp Act to provide for the levy of stamp duty on the entry made in the roll of the Bar Council. In the absence of any express provision in the Act, the Bar Council finds it difficult to recover the stamp duty from applicants for enrolment as advocates. It is proposed to enable the Bar Councils to collect such stamp duty where levied.

5. The enrolment fee is being increased from Rs. 250 to Rs. 350 in order to provide a nucleus of funds for giving legal aid to the poor.

6. In view of the proposed amendment to section 17 which deals with cases of legal practitioners who migrated from Pakistan, section 24(3) (b) has become redundant. It is proposed to be deleted.

Clauses 23 *and* 25.—These are consequential amendments in view of the proposed abolition of the common roll of advocates.

Clause 24.—It is a consequential amendment to the provision contained in clause 18 *ante*.

Clause 26.—Section 27 of the Legal Practitioners Act, 1879 empowers the High Court *inter alia* to fix fees for adversary's advocate, pleader, vakil, mukhtar or attorney in all proceedings before the High Court and the courts subordinate to it. But the section would stand repealed as soon as Chapter IV of the Advocates Act would be brought into force. There is no comparable provision in the latter Act. The clause seeks to achieve the purpose.

Clause 27.—A State Bar Council is being empowered to transfer cases pending before one of its disciplinary committees to another either of its own motion or on application and the provision relating to summary rejection of complaints is being omitted and certain consequential changes made.

Clause 28.—(*a*) It is a consequential amendment in view of the proposed abolition of the common roll of advocates.

(*b*) Sub-section (2) of section 36 of the Act empowers the disciplinary committee of the Bar Council of India to withdraw for enquiry any disciplinary proceedings against an advocate pending before the disciplinary committee of any State Bar Council. It is proposed to omit this sub-section in view of the provisions contained in the new proposed section 37 wherein appeal from the decision of the disciplinary committee of a State Bar Council shall lie to the High Court.

(*c*) It is consequential to the provisions contained in the new section 37.

Clause 29.—The proposed new section 36A seeks to ensure continuity in the proceedings of a disciplinary committee of a Bar Council in the event of its reconstitution.

Clause 30.—Under the existing section 37 of the Act an appeal lies to the Bar Council of India from an order of the disciplinary committee of a State Bar Council regarding the conduct of an advocate. It causes considerable hardship to the appellants who have to come from far off places to Delhi. It is proposed that an appeal from the decision of the State Bar Council should lie to the High Court of the State concerned.

The new section 37A is intended to provide for the continuance of the disciplinary proceedings and appeals pending before the disciplinary committee of the Bar Council of India under sub-section (2) of section 36 and section 37 of the Act as they stood prior to their amendment.

Clause 31.—The appellate authority is being authorised to enhance the punishment awarded to an advocate after giving him an opportunity of being heard.

Clause 32.—The Indian Limitation Act, 1908 has been replaced by the Limitation Act, 1963. Hence this change.

Clause 33.—It empowers the High Courts and the Supreme Court to stay the operation of any order appealed against and until an appeal is filed it empowers the disciplinary committee to stay its own order proposed to be appealed against.

Clause 34.—This amendment is consequential on the proposed abolition of the common roll.

Clause 35.—It is proposed to save the proceedings of a disciplinary committee being declared as invalid merely by reason of the absence of the Chairman or a member thereof. However, no final orders are to be passed in their absence.

Clause 36.—Like the disciplinary committee the enrolment committee, the election committee, the legal aid committee and other committees of a Bar Council and the Bar Council of India are being empowered to summon witnesses, and to enjoy other powers exercisable by the disciplinary committee under section 42 of the Act.

Clause 37.—It is a consequential amendment in view of the provision contained in clause 30.

Clause 38.—As the increase in the enrolment fee of Rs. 100 under clause 22(a) (iii) of the Bill is intended to provide a nucleus for the legal aid fund to be constituted by every State Bar Council, the same should not be taken into account in computing the share payable to the Bar Council of India out of the enrolment fees. Section 46 of the Act is proposed to be amended accordingly.

Clause 39.—State Bar Councils have felt at times the paucity of funds to carry on their functions under the Act. The clause seeks to authorise the Bar Council of India to give financial assistance to State Bar Councils by way of grant or otherwise.

Clause 40.—Under section 48 of the Act, indemnity against legal proceedings has been provided for any Bar Council or any committees thereof or a member of a Bar Council. There is no such provision for a member of a committee of a Bar Council. It is proposed to remove the lacuna by extending the same indemnity against legal proceedings to a member of any such committee as well, for his *bona fide* acts.

Clause 41.—This is a consequential amendment to clause 30 vesting the appellate jurisdiction in the High Court instead of the Bar Council of India.

Clause 42.—It is proposed to empower the Bar Council of India and its committees (except the disciplinary committee) to review their own orders.

Clause 43.—It seeks to enable the Bar Council of India to prescribe the minimum qualifications for admission to a course of degree in law in any recognised University. It also empowers the State Bar Councils to prescribe the dress of advocates. It also seeks to provide that new rules about the standards of professional conduct and etiquette shall be approved by the Chief Justice of India before being brought into force.

Clause 44.—Under section 49A of the Act the Central Government has the power to frame rules for the purposes of the Act. Any rules so made would over-ride rules made by the Bar Council of India or by a State Bar Council. In order to preserve the autonomy of the Bar Coun-

cil and to avoid requests being made for interference in their day-to-day matters, it is proposed to delete the provision. However, it is proposed to empower the Central Government to issue directions to the Bar-Council on matters on which it may make rules. It is further proposed to lay before Parliament the rules made by the Central Government under the proposed new section 49A(2).

Clause 45.—This clause seeks to allow displaced persons from Pakistan to practise as pleaders, mukhtars or revenue agents even if they are not entitled to be enrolled as advocates under this Act (new section 58AC).

With the extension of the Advocates Act to the Union territory of Goa, Daman and Diu and the State of Jammu and Kashmir, the legal practitioners are proposed to be given the right to get themselves enrolled as advocates subject to their satisfying certain conditions. The right of those legal practitioners, who do not elect to be enrolled as advocates have also to be preserved. New sections 58AD and 58AE are proposed to be inserted for the purpose.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill seeks to empower the Bar Councils to frame a scheme for the purpose of organising legal aid to the poor, the broad outlines of which are given in the Bill. Clause 15 seeks to amend section 15 of the Advocates Act, 1961, pertaining to the rule making power of the Bar Councils. It is proposed to empower the Bar Councils to make rules subject to which advocates can exercise their right to vote; for the preparation and revision of electoral rolls; and for the manner in which results of elections shall be published. Cause 24 proposes to amend section 28 of the Act. It empowers the State Bar Councils to frame rules regarding the time within which and the form in which an advocate shall express his intention for entry of his name in the roll of a State Bar Council under the proposed section 20. Under clause 26 it is proposed to empower the High Court to make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate in all proceedings in the High Court or in any court subordinate thereto. Clause 43 seeks to empower the Bar Council of India to prescribe the minimum qualifications for admission to a course of studies leading to a degree in law in any recognised University. It also empowers the Bar Council of India to prescribe the form of dresses, from which a State Bar Council may adapt any one or more dress or dresses having regard to the climatic conditions prevailing in the State. Clause 44 seeks to substitute section 49A of the Act by a new section 49A, which empowers the Central Government to direct a Bar Council to make any rules or to amend or revoke any rules already made. In case the Bar Council fails to comply or neglects to comply with the direction, the Central Government may make such rules or amend or revoke an existing rule as it thinks fit. These rules shall be laid on the Table of the Parliament.

2. The various matters with respect to which rules may be made under the Act are matters of detail. The delegaion of legislative power is thus of a normal character.

B. N. BANERJEE
Secretary.

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